

SPECIAL EDUCATION MEDIATION SYSTEM

What is Mediation?

Special education mediation is a service provided to parents and schools to assist in resolving disputes related to the identification, evaluation, educational placement of a child, or the provision of a free appropriate public education (FAPE) to a child. When such assistance is needed, mediation is available through the Arizona Department of Education/Exceptional Student Services at no cost to the parent or school. Mediation is an informal, voluntary process during which an impartial mediator helps parents and schools experiencing conflict reach a suitable agreement about a student's special education program. Mediation cannot be used to deny or delay a parent's right to a due process hearing.

The Parties

The parties involved in mediation must agree to approach the mediation in good faith with the intention of reaching an agreement. Because it is a problem-solving process rather than an adversarial process, the parties are encouraged to communicate directly with each other and to work toward a mutually agreeable solution, which may involve compromise for both parties. Although legal representation is not recommended, if either party intends to have legal representation, they must give notice to the other party in advance of the mediation.

The Mediator

The Arizona Department of Education trains mediators and monitors the effectiveness of the mediation system. Mediators are trained in mediation techniques and are knowledgeable about special education. The mediator is a neutral party to the dispute trained to encourage open communication amongst the parties, identify points of agreement, and facilitate resolution. Mediators remain unbiased and impartial and do not act as an advocate or a legal advisor for either the school or parent. Mediators are assigned on an individual basis; however, there may be times when a mentor or trainee will accompany the mediator.

The mediator may not be an employee of the Arizona Department of Education or of the school or school district involved in the education or care of the child. The person selected to mediate may not have a personal or professional interest that conflicts with his or her objectivity. The mediator will not participate in due process hearings or future legal proceedings, and any discussion or evidence obtained during the mediation may not be used in subsequent proceedings.

Mediation Procedures

- The parent(s) or the public education agency representative contacts ADE/ESS to request mediation.
- ADE/ESS explains the mediation process and obtains assurances that both parties are willing to mediate.
- The ADE/ESS staff contacts a randomly selected mediator to facilitate the mediation.
- Upon selection and assignment of a mediator, ADE/ESS notifies all parties. The mediator then contacts the parties to schedule mediation.
- The ADE/ESS office sends written materials and forms regarding the mediation process to the mediator and the parties involved.
- After the mediation is scheduled, the mediator contacts ADE/ESS regarding the mediation and informs the mediation coordinator of the parties and issues involved.
- When the mediation is complete and an agreement is reached, the parties involved mail their evaluation forms to ADE/ESS, and the mediator mails the original mediation agreement to ADE/ESS.
- All mediation documents sent to the ADE/ESS are maintained in confidential files.

A public agency may establish procedures to offer to parents and schools that choose not to use mediation an opportunity to meet with a disinterested party to explain the benefits of and encourage the use of mediation. The meeting must be at a time and location convenient to the parents. The disinterested party must be under contract with an appropriate alternative dispute resolution entity, or be under contract with an Arizona parent training and information center, or an Arizona community parent resource center.

Mediator Protocol

- The assigned mediator contacts both parties prior to the mediation to clarify the issues, gather necessary information, and explain the mediation process.
- The mediator schedules the mediation with both parties.
- The mediator determines who may be present during the mediation and may limit the number of participants (generally a maximum of three for each party).
- During the mediation proceedings, the mediator first establishes an understanding of the nature of the disagreement and determines the points of agreement.
- The mediator may limit discussions to current or future aspects of the situation.
- The mediator may caucus (meet privately), if necessary, with both parties during the mediation and must maintain confidentiality of those discussions, unless the parties otherwise agree.

- After an agreement has been reached, the mediator writes a specific, concise mediation agreement, which is signed by and provided to both parties.
- The mediator provides ADE/ESS with the original agreement.
- If an agreement cannot be reached or if parties do not follow the agreed upon mediation guidelines, the mediator may terminate the mediation.

Procedures for Schools and Parents

- Both parties take the steps necessary to ensure a sufficient amount of time is available for them to be involved in and complete the mediation process. (This is generally four to eight hours.)
- Both parties understand that the participants have the authority to act on behalf of the student and the public education agency.
- At the mediation, both parties present their viewpoint, including all relevant information.
- Both parties ask for clarification whenever material is presented or a point of discussion is not understood.
- Either party may meet separately with the mediator if it is necessary or appropriate. (This may occur when sensitive information is to be shared or when it is necessary to address private concerns of the parties.)
- Both parties actively participate in the mediation and in drafting the mediation agreement.
- Both parties involved schedule an individualized education program (IEP) meeting, which includes any agreed upon changes to the student's IEP.
- Either party may execute a legally binding agreement that sets forth any resolutions occurring as a result of dispute resolution through the mediation.

The Mediation Agreement

When issues are resolved through mediation, the parties must execute a legally binding agreement that is signed by both parties, that sets forth the resolution, and that clearly states that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. This mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.